

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

Case # 23-CR-06184-FPG-MWP  
DECISION AND ORDER

DAQUAN T. SMITH,

Defendant.

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Presently before the Court is the May 14, 2024 Report and Recommendation of Magistrate Judge Marian W. Payson, ECF No. 45 (“R&R”), recommending that this Court deny Defendant’s motion to suppress tangible evidence seized during the execution of a search warrant at 215 Avenue C, Rochester, New York. ECF Nos. 28. Objections to the R&R were due May 28, 2024. As of the date of this Order, neither party filed an objection to the R&R.

In reviewing a report and recommendation, this Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). When no objections are filed, this Court is not required to conduct a *de novo* review of a report and recommendation. *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997) (“We have adopted the rule that failure to object timely to a magistrate judge’s report may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.”). Rather, the Court reviews a magistrate judge’s report and recommendation only for clear error. *See Batista v. Walker*, No. 94 CIV. 2826, 1995 WL 453299, at \*1 (S.D.N.Y. July 31, 1995) (Sotomayor, District Judge) (“I am permitted “to adopt

those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.”) (internal quotations omitted).

Magistrate Judge Payson reminded the parties of the importance of filing timely objections, stating that “failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court’s Order.” ECF No. 45 at 18. Neither party filed an objection within the specified time, nor did either party request an extension. Of time to do so.

After reviewing the R&R for clear error, the Court agrees with its reasoning and adopts the recommendation in its entirety. For the reasons set forth therein, IT IS HEREBY ORDERED that Defendant’s motion to suppress tangible evidence, ECF No. 28, is DENIED.

IT IS SO ORDERED

June 10, 2024,  
Rochester, New York



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HON. FRANK P. GERASI, JR.  
United States District Judge  
Western District of New York